

1 THE HONORABLE JOHN C. COUGHENOUR  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 DONTE McCLELLON,

11 Plaintiff,

v.

12 OPTIONSHOUSE,

13 Defendant.

14 CASE NO. C18-0817-JCC

ORDER

15 This matter comes before the Court on Plaintiff's motion to vacate judgment and  
16 reschedule status conference (Dkt. No. 30). Defendant opposes Plaintiff's motion. (Dkt. No. 31.)

17 On May 17, 2018, Plaintiff filed this lawsuit in King County Superior Court. (Dkt. No. 1-  
18 1 at 2.) On June 5, 2018, Defendant removed the case to this Court. (Dkt. Nos. 1-2, 2 at 1.) On  
19 June 12, 2018, Plaintiff filed a motion to remand the case to state court, which the Court denied.  
20 (Dkt. Nos. 11, 19.) On July 19, 2018, Defendant moved to dismiss Plaintiff's complaint for  
21 failure to state a claim. (Dkt. No. 18). On August 14, 2018, the Court granted Defendant's  
22 motion to dismiss, and dismissed Plaintiff's complaint without prejudice and with leave to  
23 amend. (Dkt. No. 21.)

24 On September 4, 2018, Plaintiff filed an amended complaint (Dkt. No. 22). On October  
25 11, 2018, Defendant filed a motion to dismiss the amended complaint. (Dkt. No. 23.) Plaintiff  
26 never responded to Defendant's motion to dismiss. A status conference for this case was

1 scheduled on October 16, 2018. (Dkt. No. 7). Plaintiff failed to appear, and the Court issued an  
2 order to show cause why the case should not be dismissed for failure to prosecute. (Dkt. No. 24.)  
3 Plaintiff failed to respond to the Court's order to show cause. On November 2, 2018, the Court  
4 dismissed Plaintiff's amended complaint without prejudice for failure to prosecute and entered  
5 judgment. (Dkt. Nos. 28, 29.)

6 On January 22, 2019, Plaintiff filed a one-page letter asking the Court to vacate its  
7 judgment dismissing his amended complaint. (Dkt. No. 30.) Plaintiff states that "he wasn't in the  
8 State of Washington on October 16<sup>th</sup> 2018." (*Id.*) Plaintiff also states that he has been "battling a  
9 chronic disease for over a year and it had intensified since Mid-October 2018 leaving [him]  
10 physically incapable to respond in a timely matter to this case and many other cases." (*Id.*)  
11 Plaintiff asks that "this matter be allowed to proceed with a rescheduled status conference." (*Id.*)

12 In the Ninth Circuit, *pro se* parties are held to less stringent pleading standards than  
13 attorneys. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Thus, the Court construes  
14 Plaintiff's letter (Dkt. No. 30) as a motion to obtain relief from the Court's judgment dismissing  
15 his amended complaint. Pursuant to Federal Rule of Civil Procedure 60(b), "[o]n motion and just  
16 terms, the court may relieve a party or its legal representative from a final judgment, order or  
17 proceeding for the following reasons: . . . mistake, inadvertence, surprise, or excusable neglect . .  
18 . [or] any reason that justifies relief." Fed. R. Civ. P. 60(b)(1). To determine whether a party  
19 acted with excusable neglect, district courts examine: (1) the danger of prejudice to the opposing  
20 party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for  
21 the delay; and (4) whether the movant acted in good faith. *See Briones v. Riviera Hotel &*  
22 *Casino*, 116 F.3d 379, 381 (9th Cir. 1997) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 391 (1993)).

24 In this case, Plaintiff has not demonstrated excusable neglect. The Court dismissed  
25 Plaintiff's amended complaint without prejudice after he failed to respond to an order to show  
26 cause regarding his failure to appear at a status conference. (See Dkt. No. 28.) The Court waited

1 over two weeks before dismissing Plaintiff's complaint for lack of prosecution—longer than the  
2 10 days specified in its order to show cause. (*See* Dkt. Nos. 24, 26.) While Plaintiff states that he  
3 was out of Washington during the status conference, he does not explain why he failed to  
4 reschedule the hearing or respond to the Court's order to show cause. (*See* Dkt. No. 30.)  
5 Plaintiff's conclusory statement regarding his physical condition does not justify his three-month  
6 delay in responding to the Court's order to show cause. Finally, Plaintiff never responded to  
7 Defendant's motion to dismiss the amended complaint. While Plaintiff does not appear to have  
8 brought this motion in bad faith, his inaction does not amount to excusable neglect under Rule  
9 60.

10 Based on the length of delay and reason for that delay, the Court concludes that  
11 Plaintiff's failure to respond to the Court's order to show cause does not represent excusable  
12 neglect. *See* Fed. R. Civ. P. 60(b). Nor does the Court believe there is some other reason that  
13 justifies vacating its judgment and reinstating Plaintiff's amend complaint. *Id.* Plaintiff is not  
14 precluded from pursuing his claims, but he must re-file his complaint. Therefore, Plaintiff's  
15 motion to vacate the Court's judgment (Dkt. No. 30) is DENIED.

16 DATED this 22nd day of February 2019.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26



---

John C. Coughenour  
UNITED STATES DISTRICT JUDGE